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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964 No. 391

DEMOCRATIC COUNTY COMMITTEE OF PHILADELPHIA, on Behalf of MICHAEL A. MUSMANNO,
Petitioner,

v.

COUNTY BOARD OF ELECTIONS OF PHILADELPHIA COUNTY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR RESPONDENT GENEVIEVE BLATT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964 No. 391

Democratic County Committee of Philadelphia, on Behalf of Michael A. Musmanno,
Petitioner,

v.

County Board of Elections of Philadelphia County,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR RESPONDENT GENEVIEVE BLATT IN OPPOSITION

OPINIONS BELOW

All opinions below are unreported and are printed in the appendix to the petition. The opinion of the Court of Common Pleas is printed at Appendix 2a. The opinion of the Supreme Court of Pennsylvania is printed at Appendix 11a. One of the two justices who joined in the opinion of the court filed a concurring opinion, printed at Appendix 23a. A third justice concurred in the result. Two justices dissented and joined in an opinion printed at Appendix 30a.

JURISDICTION

No federal question was raised or argued in this case prior to the order of the Supreme Court of Pennsylvania affirming the judgment of the trial court. The opinion of the Supreme Court of Pennsylvania fails to entertain or dispose of the federal question which petitioner now urges this Court to review. The absence of jurisdiction to review the judgment of the state court under these circumstances is discussed *infra*, at pages 13-15.

The claim (Petition 2-3) that petitioner was denied procedural due process by the manner in which the Supreme Court of Pennsylvania disposed of its two petitions for reargument is frivolous and, in any event, is not mentioned or argued in the body of the petition.

QUESTIONS PRESENTED

In the instant case, the Supreme Court of Pennsylvania applied a well-settled Pennsylvania rule that voting for any candidate in a party primary must be done by moving the appropriate voting-machine lever allocated to that candidate. The rule is necessary to make certain that all votes counted for a particular candidate are cast (a) by persons intending to vote for that candidate and (b) by registered members of the party entitled to vote in the party primary.

1. Does the application of this state rule present a substantial federal question?

2. Can petitioner raise in this Court a federal constitutional issue which it failed to raise below until after the filing of the order of the Supreme Court of Pennsylvania and which that court did not consider?

3. Does petitioner, a political organization purporting to litigate "on behalf of" an individual candidate which it endorsed, have standing to litigate in this Court an alleged denial of constitutional rights of voters whom it does not represent?

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner relies upon Article I, Section 4 and the Seventeenth Amendment to the Constitution of the United States, both set forth in Appendix A to this brief. Petitioner mentions but apparently does not rely upon the due process clause of the Fourteenth Amendment. Petitioner does not mention at any point, and apparently does not rely upon, the equal protection clause of the Fourteenth Amendment.

STATEMENT

Respondent, Genevieve Blatt, is the candidate designated by the Pennsylvania State Board of Elections as the Democratic nominee for the office of United States Senator from Pennsylvania in the general election on November 3, 1964, as a result of the computation of the votes cast in the primary election of April 28, 1964.

Petitioner, the Democratic County Committee of Philadelphia, is the regular party organization which endorsed one of Miss Blatt's opponents, Michael A. Musmanno, a Justice of the Supreme Court of Pennsylvania. It seeks by these proceedings to obtain sufficient additional votes to have Mr. Justice Musmanno designated as the Democratic nominee.

Petitioner asks this Court to hold that numbers appearing in blank spaces on certain voting machines must be counted as if they represented votes properly cast for the Democratic candidates whose names and appropriate voting levers appeared on the voting-machine row above the row of spaces.

The blank spaces involved were in the third horizontal row, designated Row C, of the voting machines used in 13 Wards of the City of Philadelphia. Row C was marked "Special Election REPUBLICAN." Together with Row D,

which was marked "Special Election DEMOCRATIC," Row C was used in special elections to fill unexpired terms of office. Candidates in the Democratic primary election appeared on Row B; candidates in the Republican primary election appeared on Row A. The face of a typical voting machine, showing Rows C and D prepared for a special election for a member of the General Assembly of Pennsylvania, is attached to the opinion of the court below and is reproduced at page 22a of the appendix to the petition.

Both the face of the voting machine itself and the written instructions on the official sample ballot made available to electors at the polling place showed that to vote for a candidate, an elector should "turn down a pointer *over* the name of each candidate *in your party row* . . . ." (Opinion of the Court, p. 13a). The levers in the "Special Election REPUBLICAN" row (Row C) were below and (as is clear from the photograph of the face of the machine) separate from the Democratic primary row (Row B).

Although it is probable that some persons who pulled levers in the blank spaces of the "Special Election REPUBLICAN" row intended to vote for the Democratic candidates whose names appeared in the spaces on Row B above that row, the Supreme Court of Pennsylvania found as facts that:

1. *Some of the persons moving levers in the blank spaces of Row C did not intend to vote for any candidates whose names appeared in Row B.*

Respondent's evidence showed that substantial totals appeared in blank spaces of Row C which were immediately under blank spaces in Row B (the Democratic row) or which were in columns totally blank on all rows of the voting machines (Opinion of the Court, p. 14a, Concurring

Opinion p. 25a). Examples of Row C spaces placed under blank spaces in Row B are 15C, 16C and 17C, shown on the photograph appearing at p. 22a of the appendix to the petition. Totally blank columns on the same photograph are those numbered 39 and 40.

In the 13 Wards, more than 700 alleged votes appeared in the three blank spaces corresponding to 15C, 16C and 17C on the photographed machine; more than 700 alleged votes appeared in the Row C spaces corresponding to the totally blank columns 39 and 40 on the photographed machine. Moreover, substantial numbers of alleged votes appeared in the blank spaces of Row D, immediately below the blank spaces of Row C (Testimony, pp. 6-7, 11-12, 77-78; Answer of Genevieve Blatt, Exhibit B, p. 5). The numbers appearing in such spaces cannot be attributed to an intention to vote for Democratic candidates whose names appeared in the spaces immediately above, since no names whatsoever appeared above. The inescapable inference drawn from this evidence is that a substantial portion of the numbers appearing in each of the blank spaces on Row C, including the three Senatorial columns with which petitioner is most concerned, were also cast as a result of factors other than an intention to vote for candidates whose names appeared on Row B (Opinion of the Court, p. 14a; Concurring Opinion, p. 25a).

2. *A substantial number of those moving levers in the blank spaces of Row C were Republicans and non-partisans.*

All parties agreed that Republican electors, like Democratic electors, were able to move the levers on Row C (Testimony, pp. 15-17; 123-25), provided, of course, that they did not first move a lever in the same group of columns in their respective primary rows. Likewise, a non-partisan elector was able to move levers on Row C. Petitioner is therefore wholly incorrect when it states that "the ma-

jority below speculated without any support in the record that it was possible for a Republican to vote on Row 'C'" (Petition, p. 23).

Under a custom prevailing in some polling places, one voting machine was set aside for the use of Republicans and one for the use of Democrats. Seventeen voting machines were discovered which had obviously been utilized only by Republicans and non-partisans, since they had substantial numbers of votes on Row A (Republican), but no votes at all on Row B (Democratic). These machines were found to contain numbers on Row C, which are part of the numbers which petitioner now desires to count as votes cast in the Democratic primary. The inescapable inference to be drawn from these facts is that substantial numbers of Republicans moved levers on Row C not only on these 17 machines but also on all voting machines used throughout the 13 Wards. The court below so found (Opinion of the Court, p. 15a; Concurring Opinion, p. 25a).

Section 702 of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, 25 Pa. Stat. Ann. § 2812 (1963), states that "no elector who is not registered and enrolled as a member of a political party . . . shall be permitted to vote the ballot of such party . . . at any primary." The constitutionality of this legislation was upheld in *Krull* v. *Philadelphia*, 382 Pa. 1, 114 A.2d 119 (1955), *affirming on opinion below*, 2 Pa. D. & C. 2d 181 (C.P. Phila. 1955), a case in which the instant petitioner appeared to urge that the statute be sustained.

The Supreme Court of Pennsylvania, after argument at a special session of the court, affirmed the decisions of the trial court and the Board of Elections, both of which had refused to count the blank-space numbers as if they were valid votes. Subsequently, the Pennsylvania court dismissed two petitions for reargument and two sets of exceptions filed to earlier orders of the court (Appendix 54a). The instant petition followed.

ARGUMENT

I. No substantial federal question is presented by the nondiscriminatory application of a state rule that electors may vote for candidates in a party primary election only by using the appropriate voting-machine levers allocated to those candidates. The rule is a valid and necessary exercise of the State's constitutional power under Article I, Section 4 to prescribe the manner of holding elections.

The Supreme Court of Pennsylvania held that both the statutory and decisional law of Pennsylvania require an elector to cast his vote for a particular candidate in a party primary by moving the appropriate voting-machine lever allocated to that candidate, just as an elector voting by paper ballot is required to make his mark in the particular voting space allocated to that candidate.[1]

The Pennsylvania rule is a proper discharge of the state's responsibility pursuant to Article I, Section 4 of the Constitution of the United States to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives. . . ." This Court has recently observed that "the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. . . ." *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45, 50, citing *Pope* v. *Williams*, 193 U.S. 621, 633 (upholding registration statute

[1] Section 1216(d) of the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, 25 Pa. Stat. Ann. § 3056(d) (1963), states that the elector shall "vote for each candidate individually by operating *the* key, handle, pointer or knob, upon *or* adjacent to which the name of such candidate is placed." (Emphasis added.) The Pennsylvania court held that this statute requires that only one lever on any one voting machine be used to register votes for a particular candidate. On the "Jamestown" voting machines involved in this litigation, the appropriate lever is the lever immediately *above* the space in which the name of the candidate appears.

The decisional law of Pennsylvania establishes that unless an elector uses the appropriate voting-machine lever or the appropriate voting space on a paper ballot, his action can not be counted as a valid vote. *Contested Election of Flynn*, 181 Pa. 457, 37 Atl. 523 (1897).

requiring declaration of intention one year prior to registration); and *Mason* v. *Missouri*, 179 U.S. 328, 335 (upholding registration statute limited to 3 largest cities in state). As Mr. Justice Douglas commented in the opinion for the unanimous Court, the right of suffrage "is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed." 360 U.S. at 51. Clearly, a state regulation concerning the manner in which votes are to be registered on voting machines is so basic as to be well within the "broad powers" granted the states "to determine the conditions under which the right of suffrage may be exercised." 360 U.S. at 50.

Even if the requirement that an elector intending to vote for a particular candidate must use the lever allocated to that candidate has the effect of limiting the exercise of the franchise to those persons who are able to follow the clear instructions, not only on the face of the machine but also on the sample ballots, that restriction is well within the power of the state. In *Lassiter*, this Court unanimously sustained the constitutionality of the North Carolina literacy test, stating that "the ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot." 360 U.S. at 51. Only last year, in deciding *Gray* v. *Sanders*, 372 U.S. 368, a case heavily relied upon by petitioner, this Court reaffirmed the power of the state to require qualifications of the sort upheld in *Lassiter*. 372 U.S. at 379.

If literacy, a standard which admittedly may cause an otherwise intelligent person to be ineligible to vote, is a sufficiently reasonable standard for use in promoting the "intelligent use of the ballot," 360 U.S. at 51; then a state requirement that an elector cast his vote by moving the appropriate lever allocated to a particular candidate is also clearly reasonable as an exercise of state power under Section 4 of Article I.

In addition, the Pennsylvania rule is separately justified as a necessary regulation to protect registered Democratic electors who vote in the proper spaces from the infringement of their constitutional rights which would occur if their votes were diluted by:

1. votes of persons not intending to vote for Democratic candidates;

2. votes of Republican and non-partisan electors not entitled under Pennsylvania law to vote in the Democratic primary.

To count the numbers in the blank spaces of Row C as if they were votes properly cast in the Democratic primary would effect just such a dilution. It was to prevent such a result that the Pennsylvania courts adopted the rule that electors may vote only by moving the designated voting-machine lever or by marking the designated ballot space.

The Pennsylvania rule applied in the instant case is in accord with the decisions of the overwhelming majority of jurisdictions which have considered the question. The two prior decisions involving voting machines also rejected blank-space numbers. *In the Matter of Cosgrove*, 267 App. Div. 822, 46 N.Y.S.2d 195 (1944) (blank space above proper row); *In the Matter of Lester*, 205 Misc. 67, 127 N.Y.S.2d 272 (1953) (blank space below proper row). Many jurisdictions with a practice of counting any paper ballots which clearly show the intention of the voter, regardless of imperfections or irregularities, nonetheless refuse to count ballots not marked in the proper voting square. *Harper* v. *Dotson*, 32 Idaho 616, 187 Pac. 270 (1920); *Nelson* v. *McBride*, 117 Minn. 387, 389-91, 135 N.W. 1002 (1912); *State ex rel. Crain* v. *Acker*, 142 Wis. 394, 125 N.W. 952 (1910); *O'Connell* v. *Mathews*, 177 Mass. 518, 59 N.E. 195 (1901) (per Holmes, *C.J.*); *People ex rel. Bantel* v. *Morgan*, 20 App. Div. 48, 46 N.Y. Supp. 898 (1897).

Other states which follow a more strict rule with regard to irregularities necessarily also reject blank-space ballots. *Tuthill* v. *Rendleman*, 387 Ill. 321, 56 N.E.2d 375 (1944); *Evans* v. *Reiser*, 78 Utah 253, 286-87, 2 P.2d 615 (1931); *Donlon* v. *Cooke*, 212 Iowa 771, 237 N.W. 496 (1931); *Hunt* v. *Campbell*, 19 Ariz. 254, 284-85, 169 Pac. 596 (1917); *Sweetser* v. *Pacheco*, 172 Cal. 137, 140-41, 155 Pac. 639 (1916); *Carwile* v. *Jones*, 38 Mont. 590, 595-96, 101 Pac. 153 (1909); *In Re the Ballot Marks*, 18 R.I. 822, 27 Atl. 608 (1893).

Only Kentucky, in the case cited by petitioner (Petition, p. 21), *Thompson* v. *Boling*, 240 Ky. 340, 42 S.W.2d 321 (1931), validates blank-space ballots under certain conditions.

NLRB v. *Whitinsville Spinning Ring Co.*, 199 F.2d 585 (1st Cir. 1952), also cited by petitioner (Petition, p. 19), is entirely consistent with the Pennsylvania rule, since that decision holds merely that an attempted erasure on a ballot which is otherwise clearly marked in the proper voting space is not grounds for rejection under federal law.

The federal decisions cited by petitioner in support of its constitutional argument consist mainly of reapportionment cases and criminal cases.

As pointed out above, the recent reapportionment decisions specifically recognize the constitutional right of the states to prescribe the manner of holding elections and to require nondiscriminatory qualifications of the type upheld in *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45. See, *e.g.*, *Gray* v. *Sanders*, 372 U.S. 368, 379 (citing *Lassiter*).

In the cited criminal decisions, this Court held that various types of obviously criminal activity involving federal elections may be prosecuted under federal statutes. *Ex parte Yarbrough*, 110 U.S. 651 (conspiracy to beat Negro voter); *United States* v. *Mosley*, 238 U.S. 383 (conspiracy to discard valid ballots); *United States* v. *Classic*, 313 U.S. 299 (conspiracy to alter valid ballots); *United*

States v. *Saylor*, 322 U.S. 385 (conspiracy to stuff ballot boxes).

In the instant case, there is no basis in the record or in any facts outside the record for a charge that the Board of Elections of Philadelphia was in any way motivated by any intention to entrap voters or prevent votes from being counted. Any argument that the Board of Elections intentionally created the situation which caused votes to be miscast would have been considered absurd by the court below, which was familiar with the manner in which the Board of Elections had determined other issues favorably to the instant petitioner, albeit improperly, see *Blatt Appeal*, 414 Pa. 449 (1964) (dismissal of challenges to absentee ballots reversed), and which knew that the two majority Commissioners on the three-member Board of Elections were themselves Democratic ward leaders of the City of Philadelphia and therefore members of the same Democratic County Committee which is the petitioner in these proceedings.

Petitioner's comparison of the actions of the Board of Elections in the instant case with the actions of the conspirators in the federal criminal cases previously cited (Petition, p. 14), seems to be based upon the assertion in the petition that "the Election Board, however, failed to issue any instructions to the voters not to use Row C, and, arbitrarily refused to block off that row because of the cost of $3,000.00" (Petition, p. 6).

That assertion is not only unsupported by the record but is also contradicted by the statements made by petitioner's counsel in his argument to the trial court. Nothing in the record establishes the time at which any request was made of the Board by the petitioner that Row C be blocked by the use of specially-made devices manufactured for that purpose. No evidence was introduced to establish either that such a request was made or that the Board refused such a request.

The only mention in the record of the reasons for leaving Row C open appears in the statement made by

petitioner's counsel during argument in the trial court. Counsel originally stated:

> "To conclude this aspect of the factual picture, the Democratic City Committee requested the Board of Elections to block it out, but because there was a question of expense involved, and, I understand, because the question of time involved made it rather difficult, the Board decided not to block it out—I suppose, for those two reasons.
>
> • • • •
>
> THE COURT:—They didn't block them out because they didn't have enough time or money?
>
> MR. FREEDMAN:—Well——
>
> THE COURT:—Let us put it in understanding terms.
>
> MR. FREEDMAN:—That is about the size of it, or, at least, as we contend" (Testimony, pp. 21-22).

Later in his argument, petitioner's counsel showed that in fact, he did not know the exact reason why the Board of Elections did not block out the blank row:

> "MR. FREEDMAN:— . . . I think they [the Board of Elections] have tried to do their job as best they can. Maybe the time factor was involved, or the expense factor was involved. I am not criticizing the Board of Elections, but I am saying, however, that they made it possible" (Testimony, p. 126).

But, regardless of any negligence on the part of the County Board of Elections, the loss of a vote by an elector could not have occurred if the elector had met the requirement made plain not only by the setup of the voting machine itself but also by the "brief, clear" language of the sample ballot made available to each elector at the polls (Opinion of the Court, p. 13a; Concurring Opinion, p. 24a).

Unlike the voters in *Stassen for President Citizens Committee* v. *Jordan, cert. denied,* 377 U.S. 914, the electors in the instant case did not do "all in [their] power to qualify. . . ." 377 U.S. 927, 929 (memorandum of Douglas, *J.*, dissenting). Not having done so, no constitutional issue is created by the holding that they are not entitled to have their attempted votes counted.

II. No federal question whatsoever was timely raised in the state court; nor did the state court dispose of any federal question now urged by petitioner.

The lack of merit in the constitutional question now urged before this Court is shown by the total failure of petitioner's experienced counsel to raise any federal question in the state court proceedings prior to final judgment by the Supreme Court of Pennsylvania. This failure demonstrates persuasively that the facts of this case, when properly understood, do not present any federal constitutional question.

The first mention of the Constitution of the United States in these proceedings appeared in a petition for reargument filed after the entry of an order by the Supreme Court of Pennsylvania affirming the trial court and the administrative tribunal, but prior to the filing of the court's opinions.

Under settled rules of Pennsylvania procedure an issue—even a federal constitutional issue—which has not been raised in the trial court may not be raised for the first time before the Supreme Court of Pennsylvania. *Wynnewood Civic Assn.* v. *Lower Merion Township Board of Adjustment,* 406 Pa. 413, 419, 179 A.2d 649 (1962). *A fortiorari* a question may not be raised before the Supreme Court of Pennsylvania by a petition for reargument.

A federal question raised contrary to state practice for the first time in a petition for rehearing is inadequate

to support review by this Court unless the state court below actually entertains the petition and expressly decides the question. *Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120, 128. Here the petition for rehearing was denied without being entertained.

Petitioner cannot rely upon the statement in the opinion of the court that "appellant has not been deprived of any right ordained or guaranteed by the Constitution of the United States" (Opinion of the Court, p. 21a).

First, the opinion of the court depends for its authority upon the votes of both Chief Justice Bell and Justice Roberts, the two Justices who joined in the opinion, since the third Justice concurred in the result. The statement in the opinion of the court written by Chief Justice Bell must therefore be read in light of the statement in the concurring opinion written by Justice Roberts to the effect that "no federal question—constitutional or otherwise—was raised, submitted or argued in this appeal. The record fails to reveal the presence of any such question" (Concurring Opinion, p. 29a).

Second, the statement that "appellant has not been deprived of any right ordained or guaranteed by the Constitution of the United States" is not the specific or definite statement of particular constitutional rights which this Court has always required to raise a federal question. Such a statement would be inadequate to support review if it had been made in a pleading filed in a timely manner by the petitioner. *Capital City Dairy Co.* v. *Ohio*, 183 U.S. 238, 248; *Messenger* v. *Mason*, 10 Wall. 507, 509-10.

Third, and most critically, the alleged deprivation of the rights of *voters*, which petitioner seeks to litigate in this Court, is not the issue which was mentioned in the opinion of the Supreme Court of Pennsylvania. That court spoke of "appellant" Democratic City Committee's rights not of the rights of voters. If no federal question was

timely raised, and jurisdiction to review is sought to be grounded on a mention in the opinion of the state court, this Court will consider only the federal questions mentioned in that opinion, and will consider them only to the extent that they were so mentioned. *Wilson* v. *Cook*, 327 U.S. 474, 481-82 (per Stone, *C.J.*); *Northwestern Bell Telephone Co.* v. *Nebraska State Railway Commission*, 297 U.S. 471, 473. Petitioner's misquotation of the state court's opinion at page 8 of the Petition, where it substitutes the word "voters" for the word "appellant," demonstrates that petitioner, too, is aware that the constitutional question which is now urged upon this Court was never disposed of or mentioned by the Supreme Court of Pennsylvania.

Since on the record no jurisdiction exists, it is incumbent upon petitioner to attempt to obtain a certificate from the Supreme Court of Pennsylvania establishing that the federal question which he now urges this Court to consider was passed upon by the state court. No reason appears why petitioner should be relieved from following the long-standing practice of this Court in similar situations. See, *e.g.*, *Herb* v. *Pitcairn*, 324 U.S. 117, 128.

III. Petitioner has no standing to litigate in this Court the constitutional rights either of voters whom it does not represent or of a candidate with whom it has no substantial connection.

Petitioner seeks to litigate in this Court questions concerning an alleged violation of the constitutional rights of those voters who pulled levers in blank spaces on Row C. The record shows a total lack of standing on the part of petitioner, the Democratic County Committee, to litigate any such constitutional issue in this Court.

This Court has always required that litigants asserting federal constitutional issues be the persons who are

actually injured by the deprivation of which they complain. *Tileston* v. *Ullman*, 318 U.S. 44; *Tyler* v. *Judges of the Court of Registration*, 179 U.S. 405. This Court has frequently held that a determination below that standing exists, or, as in the instant case, an omission by the state court to consider the question of standing, is not binding upon this Court. *Tileston* v. *Ullman, supra; Tyler* v. *Judges of the Court of Registration, supra*, 179 U.S. at 410.

No injury to the Democratic County Committee is shown by the record of this case and no injury to the Democratic County Committee is mentioned in the petition. Any injury arising from the failure of the regular party organization to enforce its selection for the nomination is entirely speculative and insufficient to create standing to litigate a constitutional issue. *Cf. Gange Lumber Co.* v. *Rowley*, 326 U. S. 295, 305 (no standing to litigate speculative financial injury).

Petitioner does not assert, nor can it assert, that it represents any voters.

Petitioner has no standing to litigate any constitutional rights which might be claimed by Michael A. Musmanno. The only connection claimed between the Democratic County Committee and Michael A. Musmanno arises from the Committee's endorsement of Michael A. Musmanno for nomination. If that tenuous contact is sufficient to give the Committee standing to litigate Michael A. Musmanno's constitutional rights, then it would seem that any person or committee who endorsed Musmanno would also have similar standing.

Nothing appears in the record to establish that the Committee has authority to litigate for Michael A. Musmanno in any representative capacity. Indeed, from all that appears, the Committee is wholly a stranger to Michael A. Musmanno in this proceeding. No litigation of constitutional issues is allowed by a stranger to the interest affected. *Lampasas* v. *Bell*, 180 U.S. 276, 283-4.

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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Appendix A

CONSTITUTION OF THE UNITED STATES

Article I, Section 4

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Seventeenth Amendment

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Appendix B

Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, 25 Pa. Stat. Ann. (1963)

SECTION 702, 25 Pa. Stat. Ann. § 2812:

Qualifications of Electors at Primaries

The qualifications of electors entitled to vote at primaries shall be the same as the qualifications of electors entitled to vote at elections within the election district where the primary is held, provided that no elector who is not registered and enrolled as a member of a political party, in accordance with the provisions of this act, shall be permitted to vote the ballot of such party or any other party ballot at any primary.

SECTION 1216(d), 25 Pa. Stat. Ann. § 3056(d):

Instructions of Voters and Manner of Voting in Districts in Which Voting Machines Are Used

At primaries, he shall vote for each candidate individually by operating the key, handle, pointer or knob, upon or adjacent to which the name of such candidate is placed. At elections, he may vote for each candidate individually by operating the key, handle, pointer or knob, upon or adjacent to which the names of candidates of his choice are placed, or he may vote a straight political party ticket in one operation by operating the straight political party lever of the political party or political body of his choice, if such machine has thereon a separate lever for all the candidates of the political body. He may also, after having operated the straight party lever, and before recording his vote, cancel the vote for any candidate of such political party or political body by replacing the individual key, handle, pointer or knob of such candidate, and may thereupon vote for a candidate of another party,

or political body for the same office by operating the key, handle, pointer or knob, upon or adjacent to which the name of such candidate appears. In the case of a question submitted to the vote of the electors, the elector shall operate the key, handle, pointer or knob corresponding to the answer which he desires to give.